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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 ROBERT HOLMES III,

Case No. 2:15-cv-02176-APG-CWH

10 Plaintiff,

ORDER

11 v.

12 BRIAN WILLIAMS,

13 Defendant.

14 Before the court is a *pro se* petition for writ of habeas corpus pursuant to 28
15 U.S.C. § 2254, submitted by Robert Holmes, III (Dkt. #1-1). His application to proceed
16 *in forma pauperis* shall be granted (Dkt. #1).

17 It appears from the petition that it was submitted outside the applicable limitations
18 period and may be subject to dismissal on that basis.

19 The Antiterrorism and Effective Death Penalty Act (AEDPA) imposes a one-year
20 statute of limitations on the filing of federal habeas corpus petitions. 28 U.S.C. §
21 2244(d). The one-year time limitation can run from the date on which a petitioner's
22 judgment became final by conclusion of direct review, or the expiration of the time for
23 seeking direct review. 28 U.S.C. § 2244(d)(1)(A). Further, a properly filed petition for
24 state postconviction relief can toll the period of limitations. 28 U.S.C. § 2244(d)(2).

25 According to the habeas petition and the Nevada Supreme Court orders that
26 petitioner Holmes attaches, his judgment of conviction was entered on January 5, 2009.
27 The Nevada Supreme Court apparently affirmed the conviction on May 7, 2010. An
28 amended judgment of conviction was filed on September 17, 2013, which provided

1 Holmes with additional presentence credits only. Holmes appealed the amended
2 judgment of conviction. In affirming the district court, the Nevada Supreme Court
3 concluded that Holmes was not entitled to any additional credits and noted that because
4 the amended judgment of conviction dealt solely with additional presentence credits, it
5 did not provide Holmes with an opportunity to litigate a direct appeal anew. Holmes
6 then filed a state postconviction petition on September 4, 2014, and the Nevada
7 Supreme Court affirmed the denial of the petition as untimely and procedurally barred
8 on September 11, 2015. The instant federal habeas petition, which Holmes did not sign
9 or date, was submitted to the Clerk of Court for filing on November 16, 2015. Thus, the
10 federal petition was filed well beyond the one-year time limitation contained in the
11 statute, which expired some four years prior to Holmes filing his state postconviction
12 petition.

13 Petitioner may be entitled to equitable tolling of the one-year limitations period if
14 he can establish that he diligently pursued his right and some extraordinary
15 circumstance stood in his way. *See Calderon v. United States District Court (Beeler)*,
16 128 F.3d 1283, 1288 (9th Cir. 1997), overruled in part on other grounds, *Calderon v.*
17 *United States District Court (Kelly)*, 163 F.3d 530 (9th Cir. 1998); *Pace v. DiGuglielmo*,
18 544 U.S. 408, 418 (2005). The petitioner will be given the opportunity to show that
19 either the instant petition was not filed beyond the one-year statute of limitations, or that
20 he is entitled to equitable tolling of the time limitation.

21 **IT IS THEREFORE ORDERED** that petitioner's application to proceed *in forma*
22 *pauperis* (Dkt. #1) is **GRANTED**.

23 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** from the
24 entry of this order to show cause and file such proof he may have to demonstrate that
25 the petition for writ of habeas corpus was timely filed within the one-year time limitation
26 or that he is entitled to equitable tolling of the time period. He shall also set forth a
27 complete and accurate history, with dates, of any state postconviction proceedings
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1 presented to the state district court and the Nevada Supreme Court, including direct
2 appeal and state habeas petitions.

3 **IT IS FURTHER ORDERED** that if petitioner fails to demonstrate that the petition
4 was timely filed or that he is entitled to equitable tolling of the time period the court shall
5 enter an order dismissing the petition.

6 Dated: January 12, 2016.

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8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
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